

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

LEE'S BBQ and NAM SOON CHI
Respondents

Case No.: I-00-70210

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 23 Chapter 20 of the District of Columbia Municipal Regulations ("DCMR"). By Notice of Infraction (00-70210) served February 21, 2002, the Government charged Respondents Lee's BBQ and Nam Soon Chi with a violation of 23 DCMR 3012.1 for allegedly failing to take all necessary precautions to keep their premises free from rats and vermin.¹ The Notice of Infraction alleged that the violation occurred on February 5, 2002 at 1540 Benning Road, N.E., and sought a fine of \$1,000.

On March 22, 2002, Respondents filed a plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), along with a request for a reduction or suspension of any fines.

¹ 23 DCMR 3012.1 provides: "All persons engaged in the operation of any restaurant, delicatessen, or catering business shall be required to take all necessary precautions to keep the premises free from rats and vermin."

In the letter of explanation accompanying their plea, Respondents stated that, since receiving the Notice of Infraction, they have hired an exterminator, General Pest Control Company, to exterminate the premises once a month. Respondents further stated that they “have been cleaning thoroughly every night, and every morning . . . [and] are trying to locate mice droppings and where the mice are entering.” Respondents represented that this is the first time they have received a Notice of Infraction from the Department of Health.

By order of this administrative court dated March 28, 2002, the Government was permitted to respond to Respondents’ plea and request within fourteen calendar days. The Government elected not to respond. Accordingly, this matter is ripe for adjudication.

II. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted violating 23 DCMR 3012.1 on February 15, 2002 at 1540 Benning Road, N.E.
2. On February 15, 2002, Respondents failed “to take all necessary precautions to keep their premises free from rats and vermin” at 1540 Benning Road, N.E. 23 DCMR 3012.1.
3. After receiving the Notice of Infraction, Respondents undertook prompt efforts to comply with the requirements of 23 DCMR 3012.1 including hiring General Pest Control Company for monthly extermination services and twice-daily cleanings of the premises.

4. Respondents have accepted responsibility for their unlawful conduct.
5. There is no evidence in the record of a past history of non-compliance by Respondents.
6. Respondents have requested a reduction or suspension in the authorized fine. The Government has elected not to respond to Respondents' request.

III. Conclusions of Law

1. Respondents violated 23 DCMR 3012.1 on February 15, 2002. A fine of \$1,000 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(a)(1) and 3216.1(i).²
2. Respondents have requested a reduction or suspension of the authorized fine. Under the facts of this case, a reduction, although not a suspension, of the fine is appropriate. In light of Respondents' acceptance of responsibility, prompt efforts to comply with the requirements of § 3012.1 and the lack of evidence in the record of a past history of non-compliance, the fine will be reduced to \$500. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); U.S.S.G. 3E1.1; 18 U.S.C. § 3553.

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. *See* 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 3012.1. 47 D.C. Reg. at 6339 (August 11, 2000).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a fine in the amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **05/06/02**

Mark D. Poindexter
Administrative Judge